

Senate Bill No. 358

CHAPTER 640

An act to amend Sections 2701, 2702, 2703, 2708, 2725, 2815, 2815.1, 2841, 2847, 2878, 2893, 2895, 4501, 4503, and 4521 of, and to add Sections 2725.5, 2878.1, 2895.5, and 4521.2 to, the Business and Professions Code, and to add Article 4 (commencing with Section 128475) to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code, relating to healing arts.

[Approved by Governor September 30, 2003. Filed
with Secretary of State October 1, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 358, Figueroa. Nursing: vocational nursing: psychiatric technicians.

(1) The Nursing Practice Act provides for the licensing and regulation of registered nurses by the Board of Registered Nursing. Under existing law, the authority for both this board and the executive officer terminates on July 1, 2004. Existing law provides that the board is composed of 3 public members and 3 registered nurses and one licensed physician. Under existing law, a \$5 biennial licensure renewal assessment is collected from licensees and deposited into the Registered Nurse Education Fund.

This bill would extend the sunset date of the board to January 1, 2009. The bill would change the composition of the board to 4 public members and 3 registered nurses, one of whom is an advanced practice nurse, as defined. The bill would provide that, with certain exceptions, no other state agency, other than the board, may define or interpret the practice of nursing. The bill would increase the biennial licensure renewal assessment to \$10. The bill would delete obsolete references and make conforming changes.

(2) The Vocational Nursing Practice Act and the Psychiatric Technicians Law provide for the licensure and regulation of licensed vocational nurses and psychiatric technicians by the Board of Vocational Nursing and Psychiatric Technicians of the State of California. Under existing law, the authority for this board and its executive officer terminates on July 1, 2004. Existing law defines unprofessional conduct for vocational nurses and psychiatric technicians and authorizes the board to suspend or revoke an individual's license for unprofessional conduct.

This bill would extend the termination date applicable to the board and its executive officer to January 1, 2009. The bill would require both categories of licensees to report known violations of the act to the board. The bill would specify that a licensee who fails to report this information to the board may have his or her license suspended or revoked for unprofessional conduct. This bill would also require the employers of these licensees to report to the board any suspension or termination for cause of a licensee. The bill would subject employers who fail to make a report to an administrative fine.

(3) Existing law creates the Registered Nurse Education Program within the Health Professions Education Foundation. Under existing law and as a condition of being accepted into the program, the program requires registered nursing students to agree to serve in specified facilities or underserved areas. Existing law requires the Health Professions Education Foundation to solicit advice from the Board of Registered Nurses, the California Nurses Association, the Chancellor of the California Community Colleges, and the California Association of Hospitals and Health Systems when developing the program.

This bill would create the Vocational Nurse Education Program in the Health Professions Education Foundation on July 1, 2004. The bill would, as a condition of being accepted into the program, require vocational nursing students to agree to serve in specified facilities or underserved areas. The bill would, on July 1, 2004, create the Vocational Nurse Education Fund which would be funded by a \$5 license renewal assessment for vocational nurses and would be collected by the board. The bill would require the Health Professions Education Foundation to solicit advice from the Board of Vocational Nursing and Psychiatric Technicians, the California Licensed Vocational Nurses' Association, the Licensed Vocational Nurses League of California, Inc., the Chancellor of the California Community Colleges, and the California Association of Hospitals and Health Systems when developing the program.

(4) This bill would incorporate additional changes in Section 4521 of the Business and Professions Code, proposed by AB 1777, to be operative only if AB 1777 and this bill are both chaptered and become effective January 1, 2004, and this bill is chaptered last. The bill would make related changes.

The people of the State of California do enact as follows:

SECTION 1. Section 2701 of the Business and Professions Code is amended to read:



2701. There is in the Department of Consumer Affairs the Board of Registered Nursing consisting of nine members.

Within the meaning of this chapter, board, or the board, refers to the Board of Registered Nursing. Any reference in state law to the Board of Nurse Examiners of the State of California or California Board of Nursing Education and Nurse Registration shall be construed to refer to the Board of Registered Nursing.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 2702 of the Business and Professions Code is amended to read:

2702. Each member of the board shall be a citizen of the United States and a resident of the State of California. Four members shall represent the public at large, and shall not be licensed under any board under this division or any board referred to in Section 1000 or 3600 and shall have no pecuniary interests in the provision of health care services. Two members shall be licensed registered nurses under the provisions of this chapter, each of whom shall be active in the practice of his or her profession engaged primarily in direct patient care with at least five continuous years of experience, and who shall not be engaged as an educator or administrator of a nursing education program under the provisions of this chapter. One member shall be a licensed registered nurse who shall be active as an advanced practice registered nurse as defined in Section 2725.5. One member shall be a licensed registered nurse under the provisions of this chapter who shall be active as an educator or administrator in an approved program to train registered nurses. One member shall be a licensed registered nurse who is an administrator of a nursing service with at least five continuous years of experience.

SEC. 3. Section 2703 of the Business and Professions Code is amended to read:

2703. All appointments shall be for a term of four years and vacancies shall be filled for the unexpired term. No person shall serve more than two consecutive terms.

The Governor shall appoint two of the public members and the licensed members of the board qualified as provided in Section 2702. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.



SEC. 4. Section 2708 of the Business and Professions Code is amended to read:

2708. The board shall appoint an executive officer who shall perform the duties delegated by the board and who shall be responsible to it for the accomplishment of those duties.

The executive officer shall be a nurse currently licensed under this chapter and shall possess other qualifications as determined by the board.

The executive officer shall not be a member of the board.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 2725 of the Business and Professions Code is amended to read:

2725. (a) In amending this section at the 1973–74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities. It is the intent of the Legislature in amending this section at the 1973–74 session to provide clear legal authority for functions and procedures that have common acceptance and usage. It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems that provide for collaboration between physicians and registered nurses. These organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

(b) The practice of nursing within the meaning of this chapter means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:

(1) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

(2) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist,



podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

(3) The performance of skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.

(4) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

(c) “Standardized procedures,” as used in this section, means either of the following:

(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.

(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

The policies and protocols shall be subject to any guidelines for standardized procedures that the Division of Licensing of the Medical Board of California and the Board of Registered Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the Board of Registered Nursing.

(d) Nothing in this section shall be construed to require approval of standardized procedures by the Division of Licensing of the Medical Board of California, or by the Board of Registered Nursing.

(e) No state agency other than the board may define or interpret the practice of nursing for those licensed pursuant to the provisions of this chapter, or develop standardized procedures or protocols pursuant to this chapter, unless so authorized by this chapter, or specifically required under state or federal statute. “State agency” includes every state office, officer, department, division, bureau, board, authority, and commission.

SEC. 6. Section 2725.5 is added to the Business and Professions Code, to read:

2725.5. “Advanced practice registered nurse” means those licensed registered nurses who have met the requirements of Article 2.5 (commencing with Section 2746), Article 7 (commencing with Section



2825), Article 8 (commencing with Section 2834), or Article 9 (commencing with Section 2838).

SEC. 7. Section 2815 of the Business and Professions Code is amended to read:

2815. Subject to the provisions of Section 128.5, the amount of the fees prescribed by this chapter in connection with the issuance of licenses for registered nurses under its provisions is that fixed by the following schedule:

(a) The fee to be paid upon the filing of an application for a licensure by examination shall be fixed by the board at not less than seventy-five dollars (\$75) nor more than one hundred fifty dollars (\$150).

(b) The fee to be paid for taking each examination shall be the actual cost to purchase an examination from a vendor approved by the board.

(c) The fee to be paid for application for licensure by endorsement shall be fixed by the board at not less than fifty dollars (\$50) nor more than one hundred dollars (\$100).

(d) The biennial fee to be paid upon the filing of an application for renewal of the license shall be not less than seventy-five dollars (\$75) nor more than one hundred fifty dollars (\$150). In addition, an assessment of ten dollars (\$10) shall be collected and credited to the Registered Nurse Education Fund, pursuant to Section 2815.1.

(e) The penalty fee for failure to renew a license within the prescribed time shall be fixed by the board at not more than 50 percent of the regular renewal fee, but not less than thirty-seven dollars (\$37) nor more than seventy-five dollars (\$75).

(f) The fee to be paid for approval of a continuing education provider shall be fixed by the board at not less than two hundred dollars (\$200) nor more than three hundred dollars (\$300).

(g) The biennial fee to be paid upon the filing of an application for renewal of provider approval shall be fixed by the board at not less than two hundred dollars (\$200) nor more than three hundred dollars (\$300).

(h) The penalty fee for failure to renew provider approval within the prescribed time shall be fixed at not more than 50 percent of the regular renewal fee, but not less than one hundred dollars (\$100) nor more than one hundred fifty dollars (\$150).

(i) The penalty for submitting insufficient funds or fictitious check, draft or order on any bank or depository for payment of any fee to the board shall be fixed at not less than fifteen dollars (\$15) nor more than thirty dollars (\$30).

(j) The fee to be paid for an interim permit shall be fixed by the board at not less than thirty dollars (\$30) nor more than fifty dollars (\$50).



(k) The fee to be paid for a temporary license shall be fixed by the board at not less than thirty dollars (\$30) nor more than fifty dollars (\$50).

(l) The fee to be paid for processing endorsement papers to other states shall be fixed by the board at not less than sixty dollars (\$60) nor more than one hundred dollars (\$100).

(m) The fee to be paid for a certified copy of a school transcript shall be fixed by the board at not less than thirty dollars (\$30) nor more than fifty dollars (\$50).

(n) The fee to be paid for a duplicate license shall be fixed by the board at not less than thirty dollars (\$30) nor more than fifty dollars (\$50).

(o) The fee to be paid by a registered nurse for an evaluation of his or her qualifications to use the title “nurse practitioner” shall be fixed by the board at not less than seventy-five dollars (\$75) nor more than one hundred fifty dollars (\$150).

No further fee shall be required for a license or a renewal thereof other than as prescribed by this chapter.

SEC. 8. Section 2815.1 of the Business and Professions Code is amended to read:

2815.1. As provided in subdivision (d) of Section 2815, the Board of Registered Nursing shall collect an additional ten dollar (\$10) assessment at the time of the biennial licensure renewal. This amount shall be credited to the Registered Nurse Education Fund. This assessment is separate from those fees prescribed in Section 2815.

SEC. 9. Section 2841 of the Business and Professions Code is amended to read:

2841. There is in the Department of Consumer Affairs a Board of Vocational Nursing and Psychiatric Technicians of the State of California, consisting of 11 members.

Within the meaning of this chapter, board, or the board, refers to the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 10. Section 2847 of the Business and Professions Code is amended to read:

2847. (a) The board shall select an executive officer who shall perform duties as are delegated by the board and who shall be responsible to it for the accomplishment of those duties.



(b) The person selected to be the executive officer of the board shall be a duly licensed vocational nurse under this chapter, a duly licensed professional nurse as defined in Section 2725, or a duly licensed psychiatric technician. The executive officer shall not be a member of the board.

(c) With the approval of the Director of Finance, the board shall fix the salary of the executive officer.

(d) The executive officer shall be entitled to traveling and other necessary expenses in the performance of his or her duties. He or she shall make a statement, certified before some duly authorized person, that the expenses have been actually incurred.

(e) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. Section 2878 of the Business and Professions Code is amended to read:

2878. The board may suspend or revoke a license issued under this chapter for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual nursing functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence of the conviction.

(3) The use of advertising relating to nursing which violates Section 17500.

(4) The use of excessive force upon or the mistreatment or abuse of any patient. For the purposes of this paragraph, “excessive force” means force clearly in excess of that which would normally be applied in similar clinical circumstances.

(5) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(6) Failure to report the commission of any act prohibited by this section.

(b) Procuring a certificate by fraud, misrepresentation, or mistake.

(c) Procuring, aiding, abetting, attempting, or agreeing or offering to procure or assist at, a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.



(e) Making or giving any false statement or information in connection with the application for issuance of a license.

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

(h) Impersonating another practitioner, misrepresenting professional credentials or licensure status, or permitting another person to use his or her certificate or license.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of Article 12 (commencing with Section 2220) of Chapter 5.

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

(k) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(l) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, and the Board of Registered Nursing, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 12. Section 2878.1 is added to the Business and Professions Code, to read:



2878.1. (a) If a licensed vocational nurse has knowledge that another person has committed any act prohibited by Section 2878, the licensed vocational nurse shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

(b) Any employer of a licensed vocational nurse shall report to the board the suspension or termination for cause of any licensed vocational nurse in its employ. In the case of licensed vocational nurses employed by the state, the report shall not be made until after the conclusion of the review process specified in Section 52.3 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 of the Business and Professions Code and shall not be subject to discovery in civil cases.

(c) For purposes of the section, “suspension or termination for cause” is defined as suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice vocational nursing.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Falsification of medical records.

(5) Gross negligence or incompetence.

(6) Theft from patients or clients, other employees, or the employer.

(d) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

(e) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

(f) The board shall implement this section contingent upon the necessary funding in the annual Budget Act.

SEC. 13. Section 2893 of the Business and Professions Code is amended to read:

2893. At least once in every calendar month, the board shall furnish the Controller a detailed statement of all moneys collected by the board under this chapter or from any other source, and, at the same time, shall pay the amount thereof to the Treasurer. On order of the Controller, the amount so paid shall be deposited in the State Treasury to the credit of the Vocational Nursing and Psychiatric Technicians Fund and to the

Vocational Nurse Education Fund, as specified in Section 128500 of the Health and Safety Code.

SEC. 14. Section 2895 of the Business and Professions Code is amended to read:

2895. The amount of the fees prescribed by this chapter in connection with the issuance of licenses under its provisions is that fixed by the following schedule:

(a) The fee to be paid upon the filing of an application shall be in an amount not less than seventy-five dollars (\$75) and may be fixed by the board at an amount no more than one hundred fifty dollars (\$150).

(b) The fee to be paid for taking each examination shall be the actual cost to purchase the examination from a vendor approved by the board.

(c) The fee to be paid for any examination after the first shall be in an amount not less than seventy-five dollars (\$75) and may be fixed by the board at an amount no more than one hundred fifty dollars (\$150).

(d) The biennial renewal fee to be paid upon the filing of an application for renewal shall be in an amount not less than one hundred dollars (\$100) and may be fixed by the board at an amount no more than one hundred fifty dollars (\$150). In addition, an assessment of five dollars (\$5) shall be collected and credited to the Vocational Nurse Education Fund, pursuant to Section 2895.5.

(e) Notwithstanding Section 163.5, the delinquency fee for failure to pay the biennial renewal fee within the prescribed time shall be in an amount not less than fifty dollars (\$50) and may be fixed by the board at not more than 50 percent of the regular renewal fee and in no case more than seventy-five dollars (\$75).

(f) The initial license fee is an amount equal to the biennial renewal fee in effect on the date the application for the license is filed.

(g) The fee to be paid for an interim permit shall be in an amount not less than forty dollars (\$40) and may be fixed by the board at an amount no more than fifty dollars (\$50).

(h) The fee to be paid for a duplicate license shall be in an amount not less than twenty-five dollars (\$25) and may be fixed by the board at an amount no more than fifty dollars (\$50).

(i) The fee to be paid for processing endorsement papers to other states shall be in an amount not less than seventy-five dollars (\$75) and may be fixed by the board at an amount no more than one hundred dollars (\$100).

No further fee shall be required for a license or a renewal thereof other than as prescribed by this chapter.

SEC. 15. Section 2895.5 is added to the Business and Professions Code, to read:



2895.5. As provided in subdivision (d) of Section 2895, the Board of Vocational Nursing and Psychiatric Technicians shall collect an additional five dollar (\$5) assessment at the time of the biennial licensure renewal. This amount shall be credited to the Vocational Nurses Education Fund. This assessment is separate from those fees prescribed in Section 2895.

SEC. 16. Section 4501 of the Business and Professions Code is amended to read:

4501. (a) “Board,” as used in this chapter, means the Board of Vocational Nursing and Psychiatric Technicians.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 4503 of the Business and Professions Code is amended to read:

4503. (a) The board shall administer and enforce this chapter.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 18. Section 4521 of the Business and Professions Code is amended to read:

4521. The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence in carrying out usual psychiatric technician functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000) of Division 2, the record of conviction being conclusive evidence thereof.

(3) The use of advertising relating to psychiatric technician services which violates Section 17500.

(4) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug as defined in Section 4022.

(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an



extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(6) Be convicted of a criminal offense involving the falsification of records concerning prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(7) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in paragraphs (4) and (5), in which event the court order of commitment or confinement is prima facie evidence of the commitment or confinement.

(8) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in paragraph (4).

(b) Procuring a certificate or license by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or terms of this chapter.

(e) Giving any false statement or information in connection with an application.

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required by this chapter.

(h) Impersonating another practitioner, or permitting another person to use his or her certificate or license.

(i) The use of excessive force upon or the mistreatment or abuse of any patient.

(j) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5 of Division 2.



(k) Failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(l) Failure to report the commission of any act prohibited by this section.

(m) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(n) The commission of any act involving dishonesty, when that action is substantially related to the duties and functions of the licensee.

(o) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Dental Examiners, and the Board of Registered Nursing, to encourage appropriate consistency in the implementation of this section.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 18.5. Section 4521 of the Business and Professions Code is amended to read:

4521. The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence in carrying out usual psychiatric technician functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000) of Division 2, the record of conviction being conclusive evidence thereof.

(3) The use of advertising relating to psychiatric technician services which violates Section 17500.



(4) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug as defined in Section 4022.

(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(6) Be convicted of a criminal offense involving the falsification of records concerning prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(7) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in paragraphs (4) and (5), in which event the court order of commitment or confinement is prima facie evidence of the commitment or confinement.

(8) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in paragraph (4).

(b) Procuring a certificate or license by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or terms of this chapter.

(e) Giving any false statement or information in connection with an application.

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required by this chapter.



(h) Impersonating another practitioner, or permitting another person to use his or her certificate or license.

(i) The use of excessive force upon or the mistreatment or abuse of any patient.

(j) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5 of Division 2.

(k) Failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(l) Failure to report the commission of any act prohibited by this section.

(m) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(n) The commission of any act involving dishonesty, when that action is substantially related to the duties and functions of the licensee.

(o) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Dental Examiners, and the Board of Registered Nursing, to encourage appropriate consistency in the implementation of this section.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 19. Section 4521.2 is added to the Business and Professions Code, to read:

4521.2. (a) If a psychiatric technician has knowledge that another person has committed any act prohibited by Section 4521, the psychiatric technician shall report this information to the board in



writing and shall cooperate with the board in furnishing information or assistance as may be required.

(b) Any employer of a psychiatric technician shall report to the board the suspension or termination for cause of any psychiatric technician in their employ. In the case of psychiatric technicians employed by the state, the report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194. The reporting required herein shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 of the Business and Professions Code, and shall not be subject to discovery in civil cases.

(c) For purposes of this section, “suspension or termination for cause” is defined as suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to such an extent that it impairs the licensee’s ability to safely practice as a psychiatric technician.

(2) Unlawful sale of controlled substances or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Falsification of medical records.

(5) Gross negligence or incompetence.

(6) Theft from patients or clients, other employees, or the employer.

(d) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

(e) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

(f) The board shall implement this section contingent upon necessary funding being provided in the annual Budget Act.

SEC. 20. Article 4 (commencing with Section 128475) is added to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 4. Vocational Nurse Education Program

128475. (a) The Legislature hereby finds and declares that an adequate supply of professional vocational nurses is critical to assuring the health and well-being of the citizens of California, particularly those who live in medically underserved areas, and that changes in the health



care system of this state have increased the need for more highly skilled vocational nurses.

(b) The Legislature further finds and declares that in March 2002, the California Association of Health Facilities indicated that there is a shortage of 3,500 vocational nurses in long-term care facilities and estimates that 28,000 additional vocational nurses will be needed in long-term care over the next 10 years, that recently published reports indicate that vocational nurses now comprise almost 30 percent of the nation's total number of nurses and that the national vacancy rate in hospitals was about 13 percent, and that according to the California Association of Psychiatric Technicians, an additional 800 psychiatric technicians are needed due to expanding health facilities.

(c) The Legislature further finds and declares that in vocational nursing, as in other professions, certain populations are underrepresented. The Legislature also finds and declares that it is especially important that vocational nursing care be provided in a way that is sensitive to the sociocultural variables that affect a person's health. The Legislature recognizes that the financial burden of attending a school of vocational nursing is considerable and that persons from families lacking adequate financial resources may need financial assistance to complete their studies.

(d) The Legislature further finds and declares that approximately 54.1 percent of all Californians live in rural and urban areas that have been designated underserved. The shortage of vocational nurses in these areas makes it more difficult for those citizens to obtain health care and more difficult to attract and retain other health care professionals to those areas.

128480. It is the intent of the Legislature to accomplish the following:

(a) Assure an adequate supply of appropriately trained vocational nurses.

(b) Encourage persons from populations that are currently underrepresented in the profession of vocational nursing to enter that profession.

(c) Encourage vocational nurses to work in medically underserved areas.

128485. There is hereby created the Vocational Nurse Education Program within the Health Professions Education Foundation. Persons participating in this program shall be persons who agree in writing prior to completion of vocational nursing school to serve in an eligible county health facility, an eligible state-operated health facility, or a health manpower shortage area, as designated by the director of the office. Persons agreeing to serve in eligible county health facilities, eligible



state-operated health facilities, or health manpower shortage areas may apply for scholarship or loan repayment. The Vocational Nurse Education Program shall be administered in accordance with Article 1 (commencing with Section 128330), except that all funds in the Vocational Nurse Education Fund shall be used only for the purpose of promoting the education of vocational nurses and related administrative costs. The Health Professions Education Foundation shall make recommendations to the director of the office concerning both of the following:

(a) A standard contractual agreement to be signed by the director and any student who has received an award to work in an eligible county health facility, an eligible state-operated health facility, or in a health manpower shortage area that would require a period of obligated professional service in the areas of California designated by the Health Manpower Policy Commission as deficient in primary care services. The obligated professional service shall be in direct patient care. The agreement shall include a clause entitling the state to recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

(b) Maximum allowable amounts for scholarships, educational loans, and loan repayment programs in order to assure the most effective use of these funds.

(c) A person who qualifies for admission to a vocational nursing program that is accredited by the board of Vocational Nursing and Psychiatric Technicians may apply for funding under the Vocational Nurse Education Program by establishing a contractual agreement in accordance with subdivision (a).

(d) A person who holds a current valid license as a vocational nurse who wishes to seek an associate of science degree in nursing from an accredited college may apply for funding under the Vocational Nurse Education Program by establishing a contractual agreement in accordance with subdivision (a) unless the person is able to qualify under subdivision (a) of Section 128385 under the Registered Nurse Education Program.

128495. In developing this program, the Health Professions Education Foundation shall solicit the advice of representatives of the Board of Vocational Nurses and Psychiatric Technicians, the California Licensed Vocational Nurses' Association, the Licensed Vocational Nurses League of California, Inc., and other vocational nurse organizations, the Chancellor of the California Community Colleges and other vocational schools, and the California Association of Hospitals and Health Systems. The foundation shall solicit the advice of representatives who reflect the demographic diversity of California.



128500. There is hereby established in the State Treasury the Vocational Nurse Education Fund. All money in the fund shall be used for the purposes specified in the California Vocational Nurse Education Program established pursuant to this article. This fund shall receive money collected pursuant to subdivision (d) of Section 2895 of the Business and Professions Code.

128501. This article shall become operative on July 1, 2004.

SEC. 21. Section 18.5 of this bill incorporates amendments to Section 4521 of the Business and Professions Code proposed by both this bill and AB 1777. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 4521 of the Business and Professions Code, and (3) this bill is enacted after AB 1777, in which case Section 18 of this bill shall not become operative.

